





LEGISLATIVE UPDATE ON
NEW JERSEY'S ANTICIPATED
STATUTORY
HARASSMENT/DISCRIMINATION
TRAINING REQUIREMENTS:
WHAT DEALERS NEED
TO KNOW

PRESENTED BY:
DINA M. MASTELLONE, ESQ.
March 2, 2021



1



The content in this webinar and on these slides is not legal advice, and it does not create an attorney-client relationship. It represents an interpretive and informational summary of some of today's emerging legal issues.

For those in need of additional resources or assistance, please feel free to visit Genova Burns' Labor & Employment Blog on our website at genovaburns.com or contact one of our attorneys. None of today's presentation should be a substitute for legal advice.

The content of this presentation is intended for informational purposes only. It is not intended to solicit business or to provide legal advice. Your use of the presentation does not create an attorney-client relationship between you and Genova Burns LLC.

2

New Jersey Division of Civil Rights Update on
Preventing Sexual Harassment in the Workplace




The content of this presentation is intended for informational purposes only. It is not intended to solicit business or to provide legal advice. Your use of the presentation does not create an attorney-client relationship between you and Genova Burns LLC.

3

DCR Findings and Recommendations on Preventing and Eliminating Sexual Harassment

- **February 18, 2020:** The New Jersey's Division on Civil Rights (DCR) issued Findings and Recommendations on Preventing and Eliminating Sexual Harassment in New Jersey (the Recommendations).
- At about the same time, Governor Phil Murphy released proposed legislation aimed at strengthening New Jersey's Law Against Discrimination (LAD), the law which makes discrimination and harassment unlawful in the workplace.
- **September 14, 2020:** NJ Bill A4637 amending New Jersey's Law Against Discrimination (NJLAD) was introduced to the New Jersey General Assembly. The Bill was subsequently referred to the Assembly Labor Committee.
- **December 2020:** DCR Launches Internet Portal for Filing Discrimination, Harassment, Retaliation, and Bias Complaints: New Jersey Bias Investigation Access System: <https://bias.njcivilrights.gov>

4

Promote
Prevention and
Increase
Accountability

Reforms should shift focus to include all forms of bias-based harassment, including:

Race	Sexual Orientation	Gender Identity	Gender Expression	Disability & All Other LAD Protected Categories
------	--------------------	-----------------	-------------------	---

Proposed Legislation requires employers to take proactive measures to prevent harassment, including:

Maintaining anti-harassment policies	Conduct anti-harassment training within the 1 st year AND 1x every 2 years; New Employees within 90 days of hiring	Notify employees of right to be free from harassment at work
--------------------------------------	---	--

5

Policy Recommendations

Amend the LAD to require employers to:

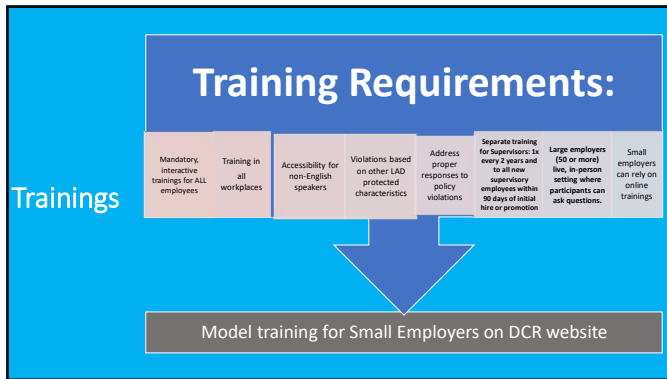
Maintain clear, written policies concerning unlawful discrimination. The policies need to be distributed upon hire and then annually or any time the policy is updated.	Detail prohibited conduct	Outline consequences of engaging in such conduct
---	---------------------------	--

LAD should also:

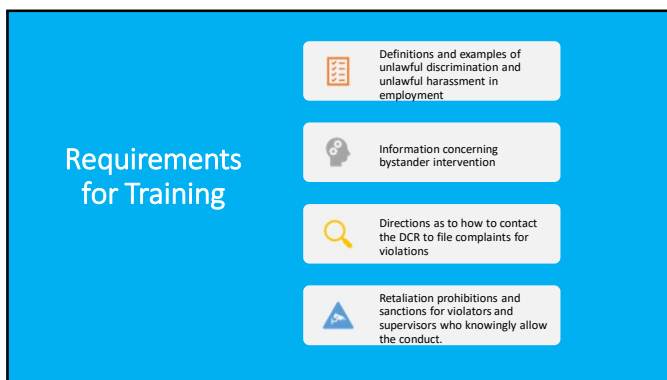
Address discrimination, sexual harassment, and harassment on basis of any other characteristics protected by the LAD	Require management to include a statement of intent to prevent discrimination and harassment and to be reviewed, and violations will be sanctioned accordingly	Set forth all processes for filing complaints, as well as violations, and subsequent consequences should be clearly defined	Provide information to complainants that they may seek address (includes relevant DCR information)
--	--	---	--

Large Employers (50+) must translate policies for all employees whose first language is not English. Small Employers have to offer policies in the primary language of employees *only if* the DCR has made the model policy available in that language. The DCR will also model policies free of charge on its website.

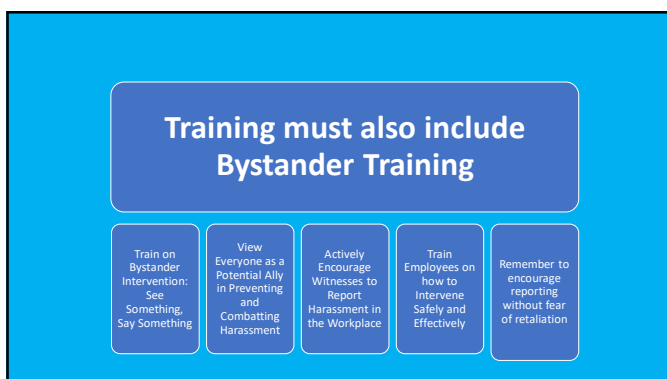
6



7



8



9

MANDATORY REPORTING

REQUIRED

- Large employers must file **annual** reports with the DCR the type, number, and ultimate resolution internal discrimination, harassment, and retaliation complaints received including the number of substantiated internal complaints
- Employers to maintain records of complaints for **3 years**
- Employers must also keep records of trainings for **3 years**

10

Actively Encourage Reporting



Concerted effort to establish comfortable reporting mechanisms

- Clearly describing complaint procedure
- Identifying multiple avenues to report sexual harassment
- Actively encourage bystander/witness reporting
- Emphasis of confidentiality
- Conduct prompt and thorough investigations
- Consequences must follow evidenced violations

11

Extending the Statute of Limitations



Currently, the statute of limitations to file a complaint with the DCR is 180 days & filing of a lawsuit under the NJLAD is 2 years

Pending Legislation:

- Increases the SOL for filing of DCR Complaints to 1 year
- Increases the SOL for LAD claims from 2 years to 3 years

12

Clarifying Legal Standards for Harassment Claims

- A *single incident* of harassing conduct may be sufficiently severe to create a triable issue of fact
- Harassment need not involve physical touching to qualify as severe or pervasive
- Loss of tangible job benefits shall not be necessary to establish a hostile work environment
- A complainant need not prove tangible productivity declined as a result of the harassment/discrimination

13

Aguas v. State of New Jersey, 220 N.J. 494 (2015)

Under *Aguas*, employers can argue that they exercised *reasonable care* based on the following 5 relevant factors:

Whether there are formal policies prohibiting harassment in the workplace

Whether there are formal and informal complaint structures for employees to report violations of the policy

Whether the employer provides anti-harassment training to all employees, including mandatory training for supervisors and managers

Whether the employer has effective sensing or monitoring mechanisms to check the trustworthiness of the policies and complaint structures

Whether the employer has demonstrated "an unequivocal commitment from the highest levels of the employer that the harassment [will] not be tolerated, and demonstration of that policy commitment by consistent practice"

14

Best Practices



Implement Strong Policies and Effective Training



Actively Encourage Reporting



Conduct Prompt, Thorough, and Impartial Investigations



Monitor for Compliance

15


Implementing Strong Policies and Effective Training

- Strong policies set expectations by sending a message from management that leadership is engaged**
- Policies developed in participation with impacted parties reflect commitment from leadership**
 - Policies set to merely satisfy legal mandates are less effective
- Employers should incorporate an anti-harassment policy into its code of conduct**
 - An internet and email usage policy should specify that harassment over email or online is strictly prohibited.
 - Address that isolated jokes, which may not be illegal, are unprofessional and unwelcome.
- Reinforce policies with effective training, with a goal to build a culture where all employees feel safe**
- Trainings should:**
 - Be live
 - Have supervisors present
 - Emphasize the negative impacts of harassment and discrimination on productivity
- Supervisors should be held accountable for effectively monitoring and implementing anti-harassment policies**
 - Employers should clearly articulate this requirement of supervisors and include it as part of their job description

16

COMING SOON

- Genova Burns LLC is launching On-Line Anti-Harassment and Anti-Discrimination Training in English and Spanish
- Supervisor and Employee Versions
- Employees can log in on anytime using their computers, iPads, Mobile Devices, etc.
- Reminders are sent to employees and the Dealership to monitor compliance
- Training will be interactive to be compliant with New York and (soon) New Jersey requirements (CT, PA, DE etc. as well!)
- Status Reporting and Certification of Completion for recordkeeping



17

THE WRAP UP

QUESTIONS?

CONCERNS?

COMMENTS?

THANK YOU!

The content of this presentation is intended for informational purposes only. It is not intended to solicit business or to provide legal advice. Your use of the presentation does not create an attorney-client relationship between you and Genova Burns LLC.

18

Contact Us



Our Office

Founded over 30 years ago, Genova Burns works with many of the premier companies and business interests spanning the region between Wall Street and Center City Philadelphia. Our firm stands at the intersection of law, government and business.

Address
404 Broad Street, Newark NJ 07102

Phone
973-533-0777

Facebook
<https://www.facebook.com/GenovaBurns>

Twitter
[Twitter.com/genovaburns](https://twitter.com/genovaburns)

LinkedIn
<https://www.linkedin.com/genova-burns-llc>

Website
www.genovaburns.com

The content of this presentation is intended for informational purposes only. It is not intended to solicit business or to provide legal advice. Your use of the presentation does not create an attorney-client relationship between you and Genova Burns LLC.
